THE DISTRICT OF COLUMBIA
DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

NOTICE OF PROPOSED RULEMAKING

The Interim Commissioner of the Department of Banking and Financial Institutions, pursuant to the authority set forth in section 22 of the Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code § 26-1121 (2001)), and section 105(a)(5), (c), and (f) of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-551.05(a)(5), (c), and (f) (2001)), hereby gives notice of his intent to adopt the following amendment to Title 26A of the District of Columbia Municipal Regulations, "Banking and Financial Institutions", to add a new chapter, "Chapter 11, Mortgage Lenders and Brokers", in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed rules provide for the licensing, assessment, and supervision of mortgage lenders, mortgage servicers, and mortgage brokers who operate in the District of Columbia. The proposed rules also set forth the prohibited practices and disclosure requirements for mortgage lenders, mortgage servicers, and mortgage brokers.

CHAPTER 11. MORTGAGE LENDERS AND BROKERS

1100 SCOPE AND APPLICABILITY

1100.1 This chapter shall apply to any person who engages in business as a mortgage lender, mortgage servicer, or mortgage broker in the District or who issues, makes, services, or brokers a mortgage loan secured by an interest in residential real property located in the District.

1100.2 A mortgage loan shall include any extension of credit that is secured, in whole or in part, by an interest in residential real property located in the District, including but not limited to a closed-end line of credit, home equity line of credits, line of credit, open-end line of credit, and reverse mortgage.

1100.3 This chapter does not apply to any person who qualifies for an exemption pursuant to section 3 of the Act, or is excluded from the definition of "mortgage broker" or "mortgage lender" as those terms are defined in section 2(1) and (11)(B) of the Act.

1101 EXEMPTIONS

1101.1 Unless preempted by federal law, an affiliate or subsidiary of a federal, state, or District bank, trust company, savings bank, savings and loan association, or credit union is exempt from obtaining a license pursuant to the Act only if the affiliate

or subsidiary maintains its principal office in the District and the parent company of the affiliate or subsidiary maintains its principal office in the District.

1102 LICENSING OF MORTGAGE LENDERS, MORTGAGE SERVICERS, AND MORTGAGE BROKERS

1102.1 No person shall engage in the business as a mortgage lender, mortgage servicer, or mortgage broker, or hold himself or herself out to the public as a mortgage lender, mortgage servicer, or mortgage broker unless a licensing application is filed and approved by the Department, and the person has a valid license from the Department.

1102.2 An applicant for a license to engage in business as a mortgage lender or mortgage servicer, or both, shall file a mortgage lender license application with the Department.

1102.3 An applicant for a license to engage in business as a mortgage broker shall file a mortgage broker license application with the Department.

1102.4 An applicant for a license to engage in business as a mortgage servicer or mortgage lender, or both, and a mortgage broker, shall file a dual mortgage lender and broker license application with the Department.

1102.5 A license application shall be filed on a form prescribed by the Department, including all information required by the Department, and be accompanied with the required fees as prescribed by the Department pursuant to section 4(f) of the Act.

1102.6 The Department may deny a license application if the application is not accompanied with the fees required pursuant to § 1102.5, or it is incomplete.

1102.7 The Department shall approve or deny a license application not later than forty-five (45) days from the date the completed application is filed with the Department.

1102.8 Any license issued pursuant this section shall expire one year from the date the license was issued.

1103 RENEWAL OF LICENSE

1103.1 In order to renew a license pursuant to section 8 of the Act, a licensee shall file a renewal license application, on a form prescribed by the Department, and be accompanied with the required fees as prescribed by the Department pursuant to section 8(d) of the Act and § 1104, on or before the expiration date of the licensee's current license.

1103.2 A renewal license application filed after the renewal-filing deadline established in § 1103.1 shall be subject to, and accompanied by, a renewal late fee in the amount of three hundred ($300) dollars, in addition to the fees imposed in § 1103.1.

1103.2 The fees established by §§ 1103.1 and 1103.2 shall be non-refundable.

1103.3 The Department shall approve or deny the renewal license application not later than forty-five (45) days from the date the renewal application was filed with the Department, unless the Department extends the time within a forty-five (45)-day period for approving or denying the renewal license application.

1103.4 The Department may deny a renewal license application if the fees required by §§ 1103.1 and 1103.2 are not submitted with the license renewal application.

1104 ANNUAL ASSESSMENTS

1104.1 Except as provided by §§ 1104.2 and 1104.3, each person licensed under the Act and filing an application to renew its license pursuant to § 1103, shall be subject to the following assessments upon the renewal of its license:

(a) Four hundred dollars ($400), plus six dollars and sixty cents ($6.60) per loan brokered in the previous license period for a mortgage broker license;

(b) Eight hundred dollars ($800), plus six dollars and sixty cents ($6.60) per loan made, originated, brokered, or serviced in the previous license period for a mortgage lender license; or

(c) One thousand, two hundred dollars ($1,200), plus six dollars and sixty cents ($6.60) per loan made, originated, brokered, or serviced in the previous license period for a dual mortgage lender and broker license.

1104.2 No person shall be subject to the annual assessment established pursuant to § 1104.1 in any year in which the person is assessed an examination fee pursuant to section 8(d) of the Act, and submits the examination fee to the Department within thirty (30) days of the due date of the examination fee.

1104.3 Any annual assessment assessed against a licensee pursuant to § 1104.1 shall not exceed fifty thousand dollars ($50,000) within any one-license year for any licensee.

1104.4 Any person who files an application pursuant to §§ 1102.2, 1102.3, or 1102.4, and was licensed by the Department as a mortgage broker, mortgage lender, or dual mortgage lender and broker during the one-year period preceding the filing of the application, shall be assessed the annual assessment established pursuant to section 1104.1, in addition to any fees required by section 4(f) of the Act.

1105 DISCLOSURES (Reserved)

1106 MORTGAGE LOAN APPLICATION AND APPROVAL PROCESS

1106.1 Each application for a proposed mortgage loan must be signed and dated by each borrower on each page of the mortgage loan application and shall contain, or have attached to the application, at a minimum, the following information:

(a) The name, social security number, address, telephone number, and source of income of each borrower;

(b) The address and legal description, if available, of the real property that is being secured by the loan;

(c) The principal amount of the loan requested;

(d) The current income and current debt of each borrower as provided by each borrower;

(e) The current assets and current liabilities of each borrower as provided by each borrower;

(f) Disclosure as to whether the loan will refinance a prior loan secured by the same real property; and

(g) If the loan will refinance a prior loan secured by the same real property, the purpose of the refinancing, and the amount of the loan that is being refinanced.

1106.2 In addition to the information required in § 1106.1, the following information shall be included in, or attached to, a mortgage loan application if available at the time of the application:

(a) The cost of the mortgage loan, including the annual percentage rate, interest rate, broker compensation, lender compensation, and finance charge;

(b) The date of maturity of the proposed loan;

(c) Disclosure as to whether the interest rate is fixed or variable;

(d) For proposed loans with a proposed variable rate of interest, disclosure of the index used for adjustments, limits on adjustments, and the adjustment period; and

(e) Disclosure as to whether the loan may result in a balloon payment.

1106.3 If a mortgage loan application is approved and executed without the information required by §§ 1106.1 and 1106.2, the mortgage loan application shall be voidable by the borrower(s), prior to the loan closing, and any fees submitted by the borrower(s) in connection with the application shall be returned to borrower(s) in the event the borrower(s) void the mortgage loan application.

1106.4 The current income, current debt, currents assets, current liabilities, and employment of each borrower shall be verified in accordance with standard residential mortgage lending industry practices that are commonly used to underwrite a loan secured by a residential lien instrument.

1106.5 A licensee shall be deemed to have complied with § 1106.4 if the licensee verified the current income, current debts, current assets, current liabilities, and employment of each borrower in accordance with the verification guidelines and practices of the Federal National Mortgage Association, Federal Home Loan Corporation, U.S. Department of Housing and Urban Development, or the U.S. Department of Veterans Affairs.

1106.6 Nothing in this section shall preclude the use of other standard industry verification practices accepted by applicable regulatory authorities.

1106.7 A borrower may withdraw a mortgage loan application at anytime, with no penalty or fee, except for any reasonable application fee, prior to signing a financing agreement or written commitment.

1107 WRITTEN COMMITMENTS, FINANCING AGREEMENTS, AND LOCK-IN AGREEMENTS

1107.1 A written commitment shall include the following:

(a) If available, identification of the real property intended to secure the mortgage loan;

(b) The principal amount and maturity term of the mortgage loan;

(c) The interest rate and points for the mortgage loan if the commitment agreement is also a lock-in agreement, or a statement that the mortgage loan will be made at the mortgage lender's prevailing rate and points for such loans at the time of closing or a specified number of days prior to closing;

(d) The amount of any commitment fee and the time within which the commitment fee must be paid;

(e) Disclosure as to whether funds will be escrowed and, if so, the purpose of the escrow;

(f) Disclosure as to whether private mortgage insurance or any other type of insurance is required;

(g) The length of the commitment period;

(h) A statement that if the mortgage loan is not closed, for any reason, within the commitment period, the mortgage lender is no longer obligated by the commitment agreement and any commitment fee paid shall be refunded to the borrower;

(i) A statement that the agreement is binding on both parties. The statement shall be disclosed in bold-faced type and at least a font size greater than the other language in the agreement; and

(j) Any other reasonable terms and conditions that the mortgage lender elects to disclose in the commitment agreement.

1107.2 A financing agreement containing the information required in section 14 of the Act may be submitted and executed in lieu of a written commitment if the financing agreement is not subject to a future determination, change, or alteration, and the financing agreement meets the requirements in § 1107.1.

1107.3 A written commitment executed pursuant to section 15(a)(8) of the Act may be submitted in lieu of a financing agreement if the written commitment contains the information required in section 14 of the Act and the information required in § 1107.1.

1107.4 The mortgage lender may enter into a lock-in agreement if the mortgage lender and each borrower sign the agreement, and the agreement contains the information required in § 1107.5.

1107.5 The lock-in agreement shall include the following:

(a) The interest rate and points for the mortgage loan, and if the rate is an adjustable rate, disclosure of the initial rate, the index used for adjustments, limits on adjustments, and the adjustment period;

(b) The amount of any lock-in fee and the time within which the lock-in fee must be paid;

(c) The length of the lock-in period;

(d) A statement that if the mortgage loan is not closed within the lock-in period, for any reason, the mortgage lender is no longer obligated by the lock-in agreement and any lock-in fee paid by the borrower shall be refunded;

(e) A statement that any terms not locked-in by the lock-in agreement are subject to change until the mortgage loan is closed at settlement; and

(f) Any other reasonable terms and conditions of the lock-in agreement required by the lender.

1107.6 A written commitment, financing agreement, or lock-in agreement executed pursuant to this section may be deemed voidable and unenforceable unless the agreement is signed by the borrower and contains the information required by this section.

1108 MORTGAGE LENDER AND MORTGAGE BROKER FEES

1108.1 For purposes of this section, a fee shall include the rate of interest, annual percentage rate, finance charge, points, yield spread premium, or any other monetary costs charged to a borrower for the origination, service, or brokering of a mortgage loan.

1108.2 A licensee shall charge fees that are reasonable and for services actually performed by the licensee or a third party providing services on behalf of licensee.

1108.3 Unless otherwise stated, any fee charged pursuant to § 1108.1 shall be disclosed and charged in accordance with applicable District and federal law, including TILA and RESPA.

1109 APPRAISAL

1109.1 A mortgage lender or a mortgage broker shall not use an appraisal conducted for real property located in the District of Columbia, which will be used to secure a mortgage loan, unless the appraisal was conducted by an appraiser that is licensed and authorized to conduct business in the District of Columbia.

1110 RECORDKEEPING

1110.1 For each mortgage loan brokered or originated, a licensee shall retain a copy of the following documents, if applicable, for each loan for at least three years after final payment is made on any mortgage loan, or after the mortgage loan is sold, whichever comes first:

(a) Mortgage loan application;

(b) Settlement statements or forms required to be executed or completed pursuant to RESPA;

(c) Forms or documents required to be executed or completed pursuant to TILA;

(d) Financing agreement;

(e) Written commitment;

(f) Lock-in agreement;

(g) Promissory note;

(h) Deed of trust;

(i) Lien release;

(j) Certification of satisfaction; and

(k) Any other document that the Department may require the licensee to maintain.

1110.2 The licensee shall provide a copy of the documents listed in § 1110.1 to the borrower within ten (10) business days of execution or completion of the document unless federal law prescribes a different timeframe.

1112 ESCROW ACCOUNTS

1112.1 A mortgage lender may not impose a penalty or fee, including an increase in interest or other finance charges, on any borrower where a borrower is not required, pursuant to section 16 of the Act, to make advance payments of real estate taxes or insurance premiums because the borrower has made a down payment equaling twenty percent (20%) or more of the total purchase price of the property or who has an equity interest in the property equal to, or greater than, twenty percent (20%) of the fair market value of the property, and the borrower elects not to make escrow payments to the mortgage lender.

1113 APPLICABILITY OF FEDERAL LAW

1113.1 Unless otherwise stated in the Act, a licensee or person required to be licensed under the Act shall comply with applicable federal law and any rule, regulation, order, or interpretation promulgated or issued pursuant to the applicable federal law.

1114 EXAMINATIONS AND INVESTIGATIONS (RESERVED)

1115 COMPLAINTS

1115.1 Each licensee shall file with the Department a written notice designating a contact person to serve as the point of contact for complaints filed with the Department

against the licensee. The notice shall include the designee's name, title, email address, phone number, and address.

1115.2 All complaints shall be filed with the Department, on a form prescribed by the Department, and in accordance with any procedures or processes adopted by the Department.

1116 REVOCATION AND SUSPENSION OF LICENSE

1116.1 The Department, prior to taking any enforcement action pursuant to sections 18 and 19 of the Act against a person, including a licensee, shall issue and serve, by United States mail, on the person or the registered agent of the person, a notice of its intent to take enforcement action against the person.

1116.2 A notice of intent to take enforcement action shall include:

(a) The basis for the proposed action;

(b) The date by which the person shall file with the Department a written response which shall include a person's request for a hearing if the person elects to have a hearing;

(c) The date and time of the hearing, if a hearing is requested by the person;

(d) Notice that the failure of the person to file a written response with the Department to a notice of intent to take enforcement action or a temporary order within the specified time period shall constitute a waiver of a hearing and shall constitute consent to a final order; and

(e) The date by which the Department shall issue a final order taking the proposed enforcement action in the event the person fails to respond to the notice of intent to take enforcement action by the date provided in the notice of intent to take enforcement action.

1116.3 The Department may issue a temporary order taking enforcement action against a person without serving a prior notice of intent to take enforcement action pursuant to § 1116.1 if the Department determines that the person has engaged in conduct that is likely to cause one or more of the conditions as set forth in section 117(b) of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code § 26-551.17(b) (2001)).

1116.4 A person may file a written response to a notice of intent to take enforcement action or a temporary order within fifteen (15) days from the date of service of the notice of intent to take enforcement action or temporary order was served upon the person. The written response shall include:

(a) An explanation of why the proposed action or temporary order is not warranted; and

(b) Any other relevant information, mitigating circumstance, documentation, or other evidence in support of the person's position.

1116.5 The Department shall issue a final order within fifteen (15) days after receiving a response from the person pursuant to § 1116.4, or after the deadline upon which a response from the person was due pursuant to § 1116.4.

1116.6 Unless otherwise required by the Act, a final order, temporary order, or any other type of enforcement action taken by the Department shall be issued or conducted in accordance with subchapter IV of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Law 13-308; D.C. Official Code §§ 26-551.09 through 551.21(2001)), and its implementing rules and regulations.

1117 ADMINISTRATIVE PENALTIES

1117.1 Any licensee which fails to file an annual report at the time prescribed by section 11 of the Act, shall be assessed a late penalty in the amount of fifty dollars ($50) per business day following the date the annual report is due until the annual report is filed with the Department.

1117.2 Except as provided by § 1117.3, any licensee, or any person required to have a license under the Act, shall be assessed the following penalties upon a violation of the Act:

(a) Two hundred dollars ($200) for a single violation of the Act if the person committing the violation is licensed by the Department, and the licensee has no more than 1 violation of the Act during the current license period;

(b) Five hundred dollars ($500) per violation if the person committing the violation is licensed by the Department, and the licensee has no more than 4 violations of the Act during the current license period; or

(c) One Thousand dollars ($1,000) per violation if the person committing the violation is licensed by the Department, and the licensee has 5 or more violations of the Act during the current license period, or the person committing the violation is not licensed by the Department.

1117.3 The Commissioner, in his or her discretion, may reduce the penalty imposed by § 1117.2 upon good cause shown, in writing, by the person against whom the penalty would be imposed.

1199 DEFINITIONS

1199.1 For the purpose of this chapter, the following terms have the meaning ascribed:

Act – the Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code § 26-1101 *et seq.* (2001)).

Applicant - a person filing an application for a license, a renewal license, or a change in control under the Act, for an individual office location.

Closed-end credit - a consumer installment loan made for a predetermined amount, which requires periodic payments of principal and interests over a specified period or term.

Commissioner – the Commissioner of the Department of Banking and Financial Institutions.

Department - the Department of Banking and Financial Institutions.

Home equity line of credit – a loan secured by the equity value in a borrower's real property that allows the borrower to obtain cash, up to a predetermined amount, drawn against the accumulated equity of the borrower's real property.

Line of credit – a commitment by a financial institution to lend funds to a borrower up to a specified amount over a specified future period.

Lock-in agreement – an agreement that guarantees an interest rate during a specified period.

Mortgage Servicer - a person who engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to any other person.

Open-end line of credit - a consumer line of credit that may be added to, up to a preset credit limit, or paid down at any time. An open-end line of credit is also referred to as revolving credit or charge account credit.

RESPA - the Real Estate Settlement Procedures Act of 1974, approved December 22, 1974 (88 Stat. 1724;12 USC § 2601 *et seq.*) and implementing rules and regulations.

Reverse mortgage - a loan in which the borrower receives periodic payments from the lender, based on the accumulated equity in the borrower's real property that secures the loan. The loan comes due when the owner dies, or sells, or moves out of, the real property.

TILA - the Truth In Lending Act, approved May 29, 1968 (82 Stat. 14; 15 USC § 1601 *et seq.*) and implementing rules and regulations.

All persons interested in commenting on the subject matter of the proposed rules should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be submitted to the Office of the General Counsel, Department of Banking and Financial Institutions, 1400 L Street, NW, Suite 400, Washington, DC 20005. Copies of the proposed rules may be obtained by writing to the address stated above.

DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE AND SECURITIES REGULATION

NOTICE OF PROPOSED RULEMAKING

The Commissioner of the Department of Insurance and Securities Regulation, pursuant to the authority set forth in section 4 of the Department of Insurance and Securities Regulation Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-103 (a)(1)(2001)) and section 21 of the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3520(2001)), hereby gives notice of the intent to adopt the following proposed rules to be included in Title 26, Chapter 45 of the District of Columbia Municipal Regulations (DCMR) in not less than 30 days from the date of publication of this notice in the D.C. Register. The rules would establish the oversight role and fiduciary obligation of each member of the board of directors of a hospital and medical services corporation. A prior version of this Notice of Proposed Rulemaking was published at 50 DCR 7178 (August 29, 2003). Changes to the text were made to clarify the language, applicability and scope of these proposed rules and the Notice of Proposed Rulemaking is being republished in its entirety.

26 DCMR is amended by adding a new Chapter 45, Oversight Role and Fiduciary Obligation of Members of the Board of Directors of a Hospital and Medical Services Corporation, to read as follows:

CHAPTER 45 OVERSIGHT ROLE AND FIDUCIARY OBLIGATIONS OF MEMBERS OF THE BOARD OF DIRECTORS OF A HOSPITAL AND MEDICAL SERVICES CORPORATION

4500 APPLICABILITY

4500.1 These rules shall apply to domestic corporations issued a certificate of authority pursuant to § 6 of the Hospital and Medical Services Corporation

Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3505 (2001)).

4500.2 A corporation shall comply with the requirements of these rules within 30 days after they become effective.

4501 REQUIRED CODE OF CONDUCT FOR DIRECTORS, OFFICERS, AND EMPLOYEES OF THE CORPORATION

4501.1 The board of directors of the corporation shall adopt a code of conduct that governs the conduct of the corporation's directors, officers, and employees.

4501.2 The code of conduct shall be submitted to the Commissioner for approval prior to its adoption by the board of directors. The Commissioner will advise the corporation, in writing, within twenty (20) days after receipt, whether the code of conduct is approved. If the Commissioner disapproves the code of conduct, he or she will specify, in writing, which elements of the code of conduct are inadequate. Any subsequent revisions to the code of conduct also shall be submitted to the Commissioner for approval.

4501.3 The corporation's bylaws shall be amended to require the corporation's board of directors to adopt policies consistent with the provisions of the code of conduct and any compliance program rules adopted by the Commissioner.

4501.4 The corporation shall file with the Commissioner annually, on or before June 1, a copy of its bylaws, which shall require the corporation's board of directors to adopt policies consistent with the provisions of the code of conduct and the rules of this chapter.

4502 MINIMUM REQUIREMENTS FOR CODE OF CONDUCT

4502.1 The code of conduct adopted by the corporation pursuant to this chapter shall include all fiduciary obligations applicable to directors as set forth in this chapter. In addition, the code of conduct as applicable to directors, officers, and employees shall include provisions that:

(a) Specify prohibited outside activities;

(b) Specify prohibited uses of corporation funds;

(c) Require proper accounting and audit procedures;

(d) Protect the corporation's handling of confidential medical and financial information;

(e) Require ethical subcontracting;

(f) Prohibit the giving or receiving of gifts or gratuities under specific guidelines;

(g) Regulate the purposes and expense of business travel;

(h) Regulate the relationships between officers and employees and agents, sales representatives, providers and consultants;

(i) Prohibit payments to government employees;

(j) Require cooperation with the investigation of any violation of the code of conduct, whether undertaken by the corporation or the Commissioner;

(k) Regulate the retention of records;

(l) Prohibit unsafe or unhealthy work place activities;

(m) Prohibit unlawful work place discrimination or harassment;

(n) Prohibit the use or possession of unlawful drugs on corporate property;

(o) Require the reporting of any knowledge of a suspected violation of the code of conduct to the compliance officer; and

(p) Specify the penalties for violations of the code of conduct.

4502.2 The code of conduct may include other provisions consistent with the effective management of the corporation.

4503 CODE OF CONDUCT COMPLIANCE PROGRAM

4503.1 The corporation's board of directors shall appoint a code of conduct compliance officer who shall have the responsibility to investigate all reports of violations of the code of conduct.

4503.2 Suspected violations of the code of conduct shall be reported to the compliance officer who shall then promptly investigate the report and prepare a written report of his findings to the board of directors. The board of directors shall ensure that the compliance officer has the authority and funding to retain independent experts as deemed necessary

by the compliance officer to assist him or her in any investigations authorized under this section.

4503.3 The board of directors of the corporation shall make a written report to the Commissioner of all cases where the board has determined that there has been a violation of the code of conduct. The report shall set forth the facts upon which any violation of the code of conduct is predicated. The report shall also set forth any remedial action taken by the corporation in response to the finding that a violation has occurred.

4503.4 The corporation shall cooperate with any investigation of a violation of these rules conducted by the Commissioner or other District of Columbia official.

4504 FIDUCIARY OBLIGATIONS OF BOARD MEMBERS

4504.1 Directors shall carry out the corporation's purposes as set forth in its charter. In fulfilling this obligation, directors shall:

(a) Annually review the corporation's charter, by-laws and state and federal laws governing the corporation's operations;

(b) Review the activities of the corporation's officers, employees, and agents to ensure that they comply with the provisions of the corporation's charter, by-laws and state and federal laws governing the corporation's operations;

(c) Promptly investigate any case where a director learns of a suspected violation of the corporation's charter, by-laws and state and federal laws governing the corporation's operations by an officer or employee of the corporation;

(d) Review the use of the corporation's funds; and

(e) Use professional legal and financial advisors to monitor changes in the law and to ensure the corporation's compliance with all legal requirements.

4504.2 Directors shall act in good faith, in a reasonably prudent manner, and in a manner reasonably believed to further the best interests of the corporation as a charitable and benevolent institution. In fulfilling this obligation, Directors shall:

(a) Exhibit fairness, openness, and honesty in all corporation business;

(b) Apply sound practical judgment when making decisions for the corporation;

(c) Be attentive to the operations of the corporation and alert to potential problems;

(d) Manage the financial affairs of the corporation carefully and responsibly;

(e) Comply with all regulatory requirements affecting the corporation;

(f) Seek independent professional advice regarding any proposals that may result in a financial benefit for officers of the corporation; and

(g) Seek independent professional advice for any matter beyond the expertise of the board or the board committee considering the issue.

4504.3 Directors shall give their complete and undivided loyalty to the corporation's mission as expressed in its charter. In fulfilling this obligation, Directors shall:

(a) Further the goals of the corporation and not their own interests;

(b) Ensure that any perquisites of their position are customary for directors of similar corporations;

(c) Ensure that they do not use their position or any information they receive in their official capacity to gain any personal advantage;

(d) Not receive excessive compensation or benefits;

(e) Not receive loans from the corporation; and

(f) Not use their positions to benefit third persons.

4504.4 Directors shall be entitled to rely upon information provided to them by officers and employees, but only to the extent that a reasonable person would believe such information to be reliable and competent. Directors have an affirmative duty to investigate any information provided to them by officers and employees that does not reasonably appear to be reliable and competent.

4504.5 Directors shall be entitled to rely upon the advice of lawyers and accountants regarding a director's compliance with these rules, but only to the extent that a reasonable person would believe such advice to be reliable and competent. Directors shall obtain a second opinion whenever advice provided to them by lawyers and accountants does not reasonably appear to be reliable and competent.

4505-4598 RESERVED

4599 DEFINITIONS

4599.1 For the purposes of this chapter, the following terms shall have the meanings ascribed:

Commissioner – the Commissioner of the District of Columbia Department of Insurance and Securities Regulation.

Compliance officer – the person appointed pursuant to this chapter by the corporation's board of directors to investigate and report on reports of violations of the corporation's code of conduct for directors, officers, and employees.

Director – a member of the corporation's board of directors or board of trustees.

Domestic corporation – a corporation organized under the laws of the District, or formed or organized under an act of Congress.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Leslie Johnson, Hearing Officer, 810 First Street, N.E., Suite 701, Washington, D.C. 20002. Copies of these rules may be obtained at the address stated above.

THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in D.C. Official Code §3-1306, District of Columbia Financial Responsibility and Management Assistance Authority Order issued September 21, 1996, and Office of the Chief Financial Officer Financial Management Control Order No. 96-22 issued November 18, 1996, hereby gives notice of the adoption of amendments to Chapters 6, 9 and 99 of Title 30 D.C.M.R., "Lottery and Charitable Games." These amendments are intended to provide the District of Columbia Lottery and Charitable Games Control Board with rules and regulations for the Hot Lotto game. The Executive Director also gives notice of her intent to take final rulemaking action to adopt these amendments in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

AMEND CHAPTER 6. "CLAIMS AND PRIZE PAYMENTS"

Amend section 605.1 subsections (b) and (f) by substituting the following:

(b) For the POWERBALL® and Hot Lotto Games, the player selected numbers on the ticket shall be in individual groups of prescribed numbers each associated with a single letter "A," "B," "C," "D," or "E".

(f) The Agency shall not pay tickets that cannot be processed for validation purposes by the terminal except as provided in § 503.7.

AMEND CHAPTER 9. "DESCRIPTION OF ON-LINE GAMES"

Add sections 940 through 944 to read as follows:

940 DESCRIPTION OF THE HOT LOTTO GAME

940.1 The Agency may offer a game known as Hot Lotto to the public.

940.2 The provisions of §§ 501.2, 503.4, 503.5, 607.2, 611.1, and 805.1 shall apply to ticket purchase, void and cancelled tickets, ticket validation, and prize payments in the Hot Lotto game.

940.3 Hot Lotto is a five (5) out of thirty-nine (39) plus one (1) out of nineteen (19) on-line lottery game, which pays the Grand Prize in accordance with these rules, either on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for this prize pool on a pari-mutuel basis. Except as provided by these rules, all other prizes are paid on a fixed cash basis. To play Hot Lotto, a player must select five (5) different numbers between one (1) and thirty-nine (39) and one (1) additional number between one (1) and nineteen (19) for input into a terminal. The additional number may be the same as one of the first five numbers selected by the player.

940.4 If a single ticket contains more than one (1) winning play on separate game boards, the prize amounts shall be added together and shall be paid in accordance with the prize payment limits set forth in §§ 940.5 and 943.

940.5 The holder of a winning Hot Lotto ticket may win in only one prize category per board in connection with the winning numbers drawn, and shall be entitled only to the prize for the highest prize category won by those numbers.

940.6 The price of a Hot Lotto game ticket shall be one play for one dollar ($1) or any other price designated by the Executive Director from a price schedule adopted by the Agency.

940.7 A ticket subject to the validations requirements of this title shall be the only proof of a wager .

941 PRIZE POOL

941.1 The prize pool for all prize categories shall consist of fifty percent (50%) of each drawing period's sales, including tax, after the prize reserve accounts are funded consistent with all agreements in place governing the conduct of Hot Lotto.

941.2 The prize money allocated to the Grand Prize category shall be awarded equally to the number of game boards winning a Grand Prize.

941.3 Any amount remaining in the prize pool at the end of each game shall be carried forward to a replacement game or expended in a manner consistent with all agreements in place governing the conduct of Hot Lotto and in accordance with District law.

941.4 An amount equal to up to one percent (1%) of sales, including tax, shall be placed in trust in one or more prize reserve accounts until the prize reserve accounts reach amounts designated pursuant to agreements governing the conduct of Hot Lotto. Once the prize reserve accounts exceed the designated amounts, the excess shall become part of the Grand Prize pool.

942 GRAND PRIZE PAYMENT

942.1 Except as provided in § 942.19, Hot Lotto Grand Prizes shall be paid with either a per winner annuity or cash payment. Annuitized prizes shall be paid in twenty-five (25) equal annual installments over a period of twenty-five (25) years.

942.2 A Hot Lotto Grand Prize winner may elect an annuity or cash payment when the prize is claimed or within sixty (60) days of the entitlement to the prize. If a player did not make the election at the time of purchase or before the sixty

(60) day period after the player becomes entitled to the prize, then the prize shall be an annuity prize.

942.3 Entitlement to the Hot Lotto Grand Prize, or a per winner portion thereof, shall occur upon the:

(a) Presentation of a winning Hot Lotto lottery ticket for validation;

(b) Presentation of a completed and signed claim form at a Claim Center; and

(c) Satisfaction of all lottery ticket and claim validation requirements set forth in this Title including, without limitation, all final determinations that may be required by the Executive Director.

942.4 A payment election made after entitlement to the prize occurs is final and cannot be revoked, withdrawn, or changed.

942.5 The Executive Director may adopt procedures, requirements, and documentation to complete a Hot Lotto Grand Prize payment election. The Executive Director's acceptance of an election is conditional upon his or her determination that the election request is valid.

942.6 If the documentation required by the Executive Director to complete a prize election is to be completed and signed in the name of a legal entity, the entity must designate in writing one (1) duly authorized natural person to execute the documentation.

942.7 If a Hot Lotto Grand Prize claimant is unable to complete the documentation required by the Executive Director for a prize payment election due to a legal, physical, or other disability, a duly authorized representative, guardian, conservator, custodian, or other fiduciary may complete and execute all required documentation on the claimant's behalf.

942.8 If a natural person completing the documentation required by the Executive Director to complete prize election is the personal representative of the estate of a deceased winner, or the authorized representative of a legal person or other entity entitled to claim the prize, he or she shall submit his or her letter of administration, trust, other authorizing documents, or their legal equivalent, showing an appointment from the court having jurisdiction over the estate, or other evidence of legally binding authorization.

942.9 Errors or omissions contained in documentation required by the Executive Director to complete a prize election shall not toll the period in which to elect an annuity or cash payment.

942.10 A person who executes documentation required by the Executive Director to complete a prize election shall be considered to have represented that the information contained therein is accurate and complete. Any person who willfully submits false or fraudulent documentation may be prosecuted for the offense of making a false statement in accordance with D.C. Code § 22-2405 (2001).

942.11 All provisions of this title relating to the election of a Hot Lotto Grand Prize payment shall be interpreted in a manner that is consistent with the purposes, requirements, and restrictions of 26 U.S.C. § 451.

942.12 If individual shares of the cash held to fund an annuity are less than $ 250,000 the Executive Director may elect to pay the winners their share of the cash held in the Hot Lotto Grand Prize pool.

942.13 If the Hot Lotto Grand Prize is not won in a drawing, the prize money allocated for the Hot Lotto Grand Prize shall roll over.

942.14 Pursuant to agreements governing the conduct of the Hot Lotto game, the Executive Director may offer guaranteed minimum Hot Lotto Grand Prize amounts or minimum increases in the Hot Lotto Grand Prize amount between drawings or make other changes in the allocation of prize money if the Executive Director finds that it would be in the best interest of the game. If a minimum Hot Lotto Grand Prize amount or a minimum increase is offered, the Hot Lotto Grand Prize shares shall be determined as set out in this section.

942.15 If the Hot Lotto Grand Prize is a guaranteed amount, the amount of the cash payment shall be determined by dividing the advertised Hot Lotto Grand Prize amount by an annuity factor obtained through a bid process.

942.16 If there are multiple Hot Lotto Grand Prize winners during a single drawing, each electing the annuitized option prize, a winner's share of the guaranteed annuitized Hot Lotto Grand Prize shall be determined by dividing the guaranteed annuitized Hot Lotto Grand Prize by the number of winners. If there are multiple Hot Lotto Grand Prize winners during a single drawing and at least one of the Hot Lotto Grand Prize winners has elected the annuitized option prize, a bid process shall determine the cash pool needed to fund the guaranteed annuitized Hot Lotto Grand Prize.

942.17 If no winner of the Grand Prize during a single drawing has elected the annuitized option prize, the amount of cash in the Grand Prize pool shall be an amount equal to the guaranteed annuitized amount divided by a factor determined by quotations.

942.18 If a natural person is the winner of a Hot Lotto Grand Prize, prize payments remaining upon the winner's death shall be paid to the winner's estate by the same annuity or cash payment method to which the winner would have been entitled had he or she lived, except that the estate may petition for accelerated payment as provided in § 942.19.

942.19 In the event of the death, during the payment period, of a natural person who was the winner of an annuitized Hot Lotto Grand Prize, the Executive Director, upon the petition of the estate of the lottery winner (the "Estate") may, subject to Federal and District law, accelerate the payment of all the remaining lottery proceeds to the Estate. If the Executive Director makes a determination to accelerate payment to the Estate, securities or cash held for the deceased prize winner, which represents the present value of that portion of future payments that are accelerated, may be distributed to the Estate. The valuation of securities, the determination of the present value of accelerated lottery payment, and the determination to accelerate shall rest with the Executive Director and shall be consistent with all agreements in effect governing the conduct of the Hot Lotto game. This section shall not be construed to confer upon the Estate or any natural person or legal entity a right

to accelerate payment, or to evaluate or identify securities which fund an annuitized prize or its acceleration.

942.20 Petitions for the acceleration of prize payments shall not be construed to be a prize claim, and there shall be no right to appeal the identification of securities or determinations of the Executive Director concerning an acceleration of the prize.

942.21 Annuitized payments of the Hot Lotto Grand Prize or a share of the Hot Lotto Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Funds remaining after the prize has been rounded down on a Hot Lotto Grand Prize win, ("breakage"), shall be added to the first cash payment to the winner or winners. Prizes which, under this chapter, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next draw.

943 HOT LOTTO PRIZE STRUCTURE

943.1 Provided the prize pools are fully funded, the fixed prize payments for Hot Lotto based on a one dollar ($1) bet are as follows:

Number of Matches Per Play	Prize Payment
All five (5) of first set plus one (1) of the second set	Grand Prize
All five (5) of first set and none of the second set	$10,000
Any four (4) of first set plus one (1) of the second set	$500
Any four (4) of first set and none of the second set	$50
Any three (3) of first set plus one (1) of the second set	$50
Any three (3) of first set and none of the second set	$4
Any two (2) of first set plus one (1) of the second set	$4
Any one (1) of first set plus one (1) of the second set.	$3
None of the first set plus one (1) of the second set	$2

943.2 The Hot Lotto Grand Prize shall be determined on a pari-mutuel basis.

943.3 If the prize pools are not fully funded and there are not sufficient funds in the prize pool to pay fixed prizes, the prizes shall be paid pursuant to § 943.4, including payment on a pari-mutuel basis if required.

943.4 The prize pool percentage allocated to the fixed prizes (the cash prize of ten thousand dollars or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the fixed prizes awarded in the current draw. If the total of the fixed prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the fixed prizes, then the amount needed to fund the fixed prizes awarded shall be drawn from the following sources in the following order:

(a) The amount allocated to the fixed prizes and carried forward from previous draws, if any; and

(b) An amount from the Prize Reserve Account, if available, not to exceed the balance of that account.

943.5 If, after these sources are depleted, there are not sufficient funds to pay the fixed prizes awarded, the highest fixed prize shall become a pari-mutuel prize. If the amount of the highest fixed prize when paid on a pari-mutuel basis, drops to or below the next highest fixed prize and there are still not sufficient funds to pay the remaining fixed prizes awarded, the next highest fixed prize shall become a pari-mutuel prize. This procedure shall continue down through all fixed prize levels, if necessary, until all fixed prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this chapter shall be divided among the winning plays in proportion to their respective prize percentages.

943.6 Minimum guaranteed prizes or increases offered by the Executive Director pursuant to § 942.14 may be waived if the alternate funding mechanism set out in subsection §§ 943.3 and 943.4 becomes necessary.

944 PROBABILITY OF WINNING

944.1 The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category, based upon the total number of possible combinations in Hot Lotto.

Number of Matches Per Ticket	Probability Distribution	Probable/Set Prize Amount
All five (5) of first set plus one (1) of the second set	1: 10,939,383.000000	Grand Prize
All five (5) of first set and none of the second set	1: 607,743.500000	$10,000
Any four (4) of first set plus one (1) of the second set	1: 64,349.311765	$500
Any four (4) of first set and none of the second set	1: 3,574.961765	$50
Any three (3) of first set plus one (1) of the second set	1: 1,949.979144	$50
Any three (3) of first set and none of the second set	1: 108.332175	$4
Any two (2) of first set plus one (1) of the second set	1: 182.810545	$4
Any one (1) of first set plus one (1) of the second set.	1: 47.176915	$3
None of the first set plus one (1) of the second set	1: 39.314096	$2
Overall	1: 16.091706	$2

AMEND CHAPTER 99, "DEFINITIONS"

Amend subsection 9900.1 by adding the following:

On-line Game Ticket- a computer generated lottery ticket issued by an on-line terminal as proof and receipt for a wager.

Quick Pick – numbers selected by the central computer system.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days from the date of publication of this notice in the Register. Comments should be filed with the Executive Director, District of Columbia Lottery and Charitable Games Control Board, 2101 Martin Luther King, Jr., Avenue, S.E., Washington, D.C. 20020. Copies of these proposed rules may be obtained at the address stated above.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors of the District of Columbia Water and Sewer Authority ("the Board"), pursuant to the authority set forth in section 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Code §§ 34-2202.03(3), (11) and 34-2202.16, Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Code § 2-505(a), and in accordance with 21 DCMR Chapter 40, hereby gives notice of its intention to amend Chapter 41 of the Water and Sanitation Regulations to adopt new retail water and sewer rates. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

I. Timing of Final Action on Proposed Rulemaking

No final action will be taken on the Rulemaking Proposal described in this notice until after each of the following events has occurred:

1. A public hearing is held to receive comments on the proposed rulemaking. A hearing date will be determined at a later date, and will be published in the District of Columbia Register.

2. The public comment period on this rulemaking expires; and

3. The Board of Directors takes final action after public comments are considered.

II. Rulemaking Proposal

The following rulemaking action is proposed:

Title 21 DCMR, Chapter 41 RETAIL WATER AND SEWER RATES, Section 4100 RATES FOR WATER SERVICE, subsection 4100.3 is amended to read as follows:

CHAPTER 41 RETAIL WATER AND SEWER RATES

4100 RATES FOR WATER SERVICE

4100.3 The retail rate for metered water service of One Dollar and Seventy-Four Cents ($1.74) for each One Hundred Cubic Feet ($100ft^3$) of water used shall be:

a) Effective October 1, 2004, increased from One Dollar and Seventy – Four Cents ($1.74) for each One Hundred Cubic Feet ($100ft^3$) of water used to One Dollar and Eighty-Three Cents ($1.83) for each One Hundred Cubic Feet ($100ft^3$) of water used;

Title 21 DCMR, Chapter 41 RETAIL WATER AND SEWER RATES, Section 4101 RATES FOR SEWER SERVICE, subsection 4101.1 is amended to read as follows:

4101 RATES FOR SEWER SERVICE

4101.1 The retail rate for sanitary sewer service of Two Dollars and Sixty-Three Cents ($2.63) for each One Hundred Cubic Feet (100ft^3) of water used shall be:

a) Effective October 1, 2004, increased from Two Dollars and Sixty-Three Cents ($2.63) for each One Hundred Cubic Feet (100ft^3) of water used, to Two Dollars and Seventy-Six Cents ($2.76) for each One Hundred Cubic Feet (100ft^3) of water used.

If the proposed rulemaking is adopted, the rules will replace existing rules adopted by the Board at its meeting of July 3, 2003. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Comments on these proposed rules should be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the D.C. Register to, Linda R. Manley, Secretary to the Board, District of Columbia Water and Sewer Authority, 5000 Overlook Ave., S.W., Washington, D.C., 20032.

In addition, the Board will also receive comments on these proposed rates and expansion of the lifeline program to tenants at a public hearing to be held at a later date.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 929 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Supported Employment Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for supported employment services, a rehabilitative service, provided to participants with mental retardation in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also authorize Medicaid reimbursement rates for supported employment services.

On March 7, 2003, a notice of emergency and proposed rulemaking was published in the *D.C. Register* (50 DCR 2053). These emergency and proposed rules supercede and replace the previously published rules. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of supported employment services.

The emergency rulemaking was adopted on December 19, 2003 and became effective on that date. The emergency rules will remain in effect for one hundred and twenty days or until April 17, 2004, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Amend Title 29 DCMR by adding the following new section 929 to read as follows:

SECTION 929 SUPPORTED EMPLOYMENT SERVICES

929.1 Supported employment services shall be reimbursed by the Medicaid Program for each participant with mental retardation in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

929.2 Supported employment shall consist of paid employment for clients for whom competitive employment at or above the minimum wage is

unlikely, and who, because of their mental retardation, need intensive on-going support to perform in a work setting.

929.3 Supported employment may be conducted in a variety of work settings, including work sites where individuals without mental retardation are employed.

929.4 Supported employment services shall be delivered under the following three venues:

(a) Intake and Assessment;
(b) Job Development; and
(c) Placement and Support.

929.5 Immediately following intake each provider shall conduct an assessment, through the use of a vocational profile or situational assessment, of the supportive services needed by each client to succeed in a work environment.

929.6 Intake and assessment services shall not be billed in excess of thirty (30) days for each client. If extended services are required for continuation of a situational assessment, the provider shall submit a written justification to the client's case manager. Extended services shall be approved by MRDDA and documented in the client's IHP or ISP.

929.7 Job development activities eligible for reimbursement include, but are not limited to the following:

(a) Conducting workshops designed to assist the client in completing employment applications or preparing for interviews;
(b) Conducting workshops to instruct clients on proper work attire;
(c) Completing job applications on behalf of the client;
(d) Assisting the client with job exploration and placement, including assessing opportunities for advancement;
(e) Visiting employment sites;
(f) Making telephone calls to prospective employers, utilizing the internet, magazines, newspapers and other publications as leads;
(g) Collecting descriptive data regarding various types of employment opportunities, for purposes of preparing a standardized set of requirements for prospective employees; and
(h) Negotiating employment terms on behalf of the client.

929.8 Job development activities shall not be billed in excess of 90 days for each client, unless previously authorized by the client's case manager and documented in the client's IHP or ISP. The provider shall submit a

written justification in support of the extended services to the client's case manager.

929.9 Placement and support activities including follow-along are those activities designed to assist and support the client after employment has been obtained. Activities eligible for reimbursement include but are not limited to the following:

(a) Assisting the client with learning the tasks and responsibilities of the job through various instructional strategies;
(b) Coaching the client on and off the job site;
(c) Consulting with other professionals and the client's family, if necessary; and
(d) Consulting with the client's employee, co-workers or supervisors, if necessary.

929.10 Each provider shall visit the client at the work-site at least twice per month after employment has been obtained. The provider shall maintain written documentation of each client visit.

929.11 If supported employment services are provided at a work site where persons without a disability are employed, reimbursement for supported employment services shall only be made for adaptations, supervision and training required by the client who receives Wavier services pursuant to this section. No payment shall be made for supervisory activities, which are rendered as a normal part of the business setting.

929.12 Supported employment services are ineligible for reimbursement if the services are available to the client through programs funded under Title I of the Rehabilitation Act of 1973 (Pub.L. 93-112; 29 U.S.C. §720 *et.seq.*) or the Individuals with Disabilities Education Act (Pub. L. 91-230; 20 U.S.C. § 1400 *et seq.*) (hereinafter the "Acts"). The case manager shall obtain documentation which demonstrates that supported employment services are not otherwise available pursuant to the Acts in this section for inclusion in the client's record, IHP, or ISP.

929.13 When applicable, each provider shall be certified by the U.S. Department of Labor.

929.14 Each provider shall provide appropriate services for each client requiring physical assistance to accomplish basic activities of daily living on the job site.

929.15 Each provider shall ensure that each client has access to first-aid on the job site.

929.16 Supported employment services shall be pre-authorized and provided in accordance with each client's IHP or ISP.

929.17 Each provider shall develop a plan which addresses how the provider will meet the needs and communicate with non-English clients.

929.18 Each provider of supported employment services shall:

(a) Be a public or private agency;

(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for supported employment services;

(c) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);

(d) Ensure that all staff providing services are qualified and properly supervised;

(e) Offer the Hepatitis B vaccination;

(f) Offer training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor regulations at 29 CFR 1910.1030; and

(g) Conduct periodic in-person supervisory assessment of the client and supportive employment staff at least twice a year and more frequently if warranted by the client's circumstances and document each assessment in the client's record.

929.19 Each person providing supported employment services for a provider under section 929.18 shall meet all of the following requirements:

(a) Be at least eighteen (18) years of age;

(b) Be acceptable to the client;

(c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician stating that the person is free from communicable disease;

(d) Have the ability to communicate with the client;

(e) Be able to read and write the English language;

(f) Have a high school diploma or graduate equivalency development (GED) certificate or have appropriate credentials in the professional field of work;

(g) Have (1) year of experience providing supported employment services;

(h) Agree to carry out the responsibilities to provide supported employment services consistent with the client's IHP or ISP;

(i) Complete pre-service and in-service training approved by MRDDA; and

(j) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002, (D.C. Law 14-98; D.C. Official Code § 44-551 *et seq.*).

929.20 Supported employment services shall not be provided concurrently with day treatment, prevocational, or day habilitation services.

929.21 The reimbursement for supported employment services shall be as follows:

(a) Intake and Assessment - $140.00 per day.
(b) Job Development- $140.00 per day.
(c) Placement and Support- 1:00-3.99 hrs shall be $70.00 per day; and 4.00 hrs and over shall be $140.00 per day.

929.22 If supportive employment services are provided in a facility-based setting, the facility must be suitable for the intended use, accessible to persons with mobility limitations and comply with all applicable federal, State and local laws and regulations.

929.23 The provider shall not bill for incentive payments, subsidies or unrelated vocational training expenses such as the following:

(a) Incentive payments made to an employer to encourage or subsidize the client's participation in a supportive employment services program;

(b) Payments that are passed through to users of supportive employment services programs; or

(c) Payments for vocational training that is not directly related to the client's supportive employment services program.

929.24 No payment shall be made for routine care and supervision, which is the responsibility of the family, group home provider, or employer.

929.25 Each provider shall maintain a copy of each client's record at least six (6) years after the date of discharge.

929.99 **DEFINITIONS**

When used in this section, the following terms and phrases shall have the meanings ascribed:

Client- An individual with mental retardation who has been determined eligible to receive services under the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Communicable Disease - Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Follow-up- Ongoing support services necessary to assure job retention.

Individual Habilitation Plan (IHP) - Shall have the same meaning as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code, 7-1304.03).

Individual Support Plan (ISP) - The successor to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Intake- A process designed to obtain information about the client and their needs as it relates to community integration and employment.

Provider- Any public or private agency that provides services pursuant to this section.

Situational Assessment- A type of assessment that provides the client an opportunity to explore job tasks in real work environments in the community. This assessment is useful in identifying the type of employment that may be beneficial to the client and the support required by each client to succeed in the work environment.

Vocational Profile - An assessment designed to assist clients, their families and service providers with specific employment related data that will generate positive employment outcomes. The assessment outlines the life, relationships, challenges, and perceptions of the client as they relate to potential sources of community support and mentorship.

Comments on the proposed rules should be sent in writing to Robert Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, not later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority hereby gives notice of the adoption on an emergency basis of amendment to Chapter 93 to Title 14, which amends the Partnership Program for Affordable Housing. The amended sections will: (1) allowing up to 100% of units to be subsidized in properties designated for families, provided that for any subsidy of more than 50% of the units, Board of Commission review is necessary and the subsidy must be reasonable and necessary for the financial viability of the property; (3) awarding, subject to Board of Commission review, a Housing Assistance Payment (HAP) contract on the basis of non-solicited proposals under certain circumstances; (4) awarding a HAP contract to the owner of an eligible property under a revitalization or development plan initiative of DCHA or a DCHA development subsidiary; (5) awarding a HAP to the owner of an existing property that is either losing an operating subsidy or in need of rental subsidy in order to retain occupancy of eligible low income households; and (6) allowing the referral of applicants with special needs to the HCVP waiting list by certain District agencies. The emergency rule was adopted on January 14, 2004, and became effective immediately on that date.

This emergency action is based on the need to address the fazing out of the Tenant Assistance Program by the District of Columbia. This amendment will facilitate the housing of Tenant Assistance Program families who would otherwise lose their housing.

The Board of Commissioner also give notice of intent to take final rulemaking action to adopt this amendment not later than thirty (30) days after the date of publication of this notice in the D.C. Register.

The emergency rule will expire on May 13, 2004, or upon publication of the Notice of Final Rulemaking in the Register, whichever occurs first.

"CHAPTER 93 PARTNERSHIP PROGRAM FOR AFFORDABLE HOUSING

Secs.

9300 PURPOSE OF THE PROGRAM

9300.1 The purpose of the Partnership Program for Affordable Housing is to work, in partnership with private sector for profit and non-profit owners, to protect and increase the supply of affordable housing in the District of Columbia, particularly:

(a) In properties requiring rehabilitation as a result of significant code violations;

(b) In neighborhoods where affordable housing is not readily available;

(c) Where subsidies are needed to reduce displacement as a result of gentrification;

(d) For low income disabled families requiring accessible or supportive living environments;

(e) For elderly families requiring accessible or supportive living environments; and

(f) Of units, located in poverty impacted neighborhoods, undergoing substantial rehabilitation as part of a comprehensive neighborhood revitalization strategy in which subsidies are required to reduce displacement or increase levels of affordability.

9301 OBJECTIVES OF THE PROGRAM

9301.1 The objectives of the Partnership Program are to:

(a) Utilize the expertise of the private sector to protect and increase affordable housing;

(b) Leverage private funds to develop affordable housing;

(c) Ensure long term availability of affordable housing;

(d) Encourage mixed income development and in mixed income communities; and

(e) Support other District of Columbia housing initiatives.

9302 SCOPE AND SIZE OF THE PROGRAM

9302.1 DCHA will provide Partnership Program subsidy to units within privately or public/private partnership owned and developed rental housing properties that help DCHA accomplish the purposes and objectives of the program, as listed in Sections 9300 and 9301 of this Title, respectively, and meet the criteria described in Sections 9306, 9307 and 9308 of this Title.

9302.2 The Partnership Program is available to existing units that meet Housing Quality Standards or those that require substantial rehabilitation to do so, and new construction.

(a) Existing unit is defined as any existing rental housing unit that requires less than $1,000 in improvements to meet the standards necessary to receive Housing Assistance Payments.

(b) Substantial rehabilitation is defined as any rental housing unit that requires more than $1,000 in improvements to meet the standards necessary to receive Housing Assistance Payments and for which rehabilitation has not yet started before the execution of the Agreement to Enter into a Housing Assistance Payment Contract.

(c) New construction is defined as any new rental housing unit not under construction before the award of the Agreement to Enter into a Housing Assistance Payment Contract.

9302.3 DCHA, annually, may make up to twenty percent (20%) of its total Housing Choice Voucher Program allocation available for the Partnership Program. The allocation figure may be adjusted from time to time subject to approval by the Board of Commissioners and is available by contacting the DCHA Office of Planning and Development or DCHA's Housing Choice Voucher Program.

9303 AVAILABLE SUBSIDY LEVELS

9303.1 Owners of existing units, and units to be substantially rehabilitated or newly constructed, are eligible to apply for Partnership Program subsidy for up to one hundred percent (100%) of the units in each property participating in the Partnership Program, or such lesser percentage as may be set by the DCHA Board of Commissioners for a particular development, housing assistance program or allocation of vouchers under 9302.3 above.

9303.2 Partnership Program subsidy may be provided for up to one hundred percent (100%) of the units in a qualified property if the property is a single-family house or units that are specifically for households comprised of elderly families, disabled families, families receiving supportive services, to the extent permitted under federal funding restrictions, or as otherwise permitted by action of the

DCHA Board of Commissioners. The maximum percentage available can be determined by contacting DCHA's Housing Choice Voucher Program.

9303.3 The initial and subsequent rents paid under the Housing Assistance Payment Contract (Contract Rents) will be based upon an analysis of the reasonableness of the proposed rent in the neighborhood in which the property is located.

9303.4 Contract Rents will not exceed the payment standard for the areas in which the property is located. In some neighborhoods this is as much as 120% of the Fair Market Rents (FMRs) adjusted for bedroom size.

9303.5 For Fiscal Year 2002, 2003, and 2004, FMRs will be based on the 50th percentile of rents in the Metropolitan Statistical Area. The current FMRs are available by contacting the Housing Choice Voucher Program.

9303.6 DCHA may, after review by the Board of Commissioners, enter into a Housing Assistance Payment contract where the percentage of the total units to be subsidized exceeds 50% of the units, provided that the total operating subsidy is reasonable and necessary and not in excess of the funds necessary for the financial viability and proper operation of the property. Each unit and household occupying a voucher assisted unit is subject to Section 9312.7 as well as all other program requirements.

9304 PROGRAM APPLICATION AND AWARD

9304.1 The Partnership Program seeks to be as flexible as possible in order to protect and increase the supply of affordable housing.

(a) DCHA may award Housing Assistance Payment (HAP) Contracts periodically on a competitive basis under the Partnership Program through published announcements.

(i) DCHA will advertise for two or more times, at least one week apart, in a newspaper of general circulation for that DCHA will accept applications for assistance.

(ii) The deadline for applications shall be at least 30 days after the date of the last publication.

(iii) The advertisement shall identify the estimated number of units that will be assisted.

(iv) The advertisement will not state that applications will only be considered if submitted in response to the advertisement, as DCHA may also receive and consider from time to time applications for allocations of Partnership Program funding assistance under Sections 9304.2 and 9304.3 hereof on a non-competitive basis.

(b) In addition to applications in response to advertisements, DCHA may also request owners with properties in eligible areas of the District of Columbia to respond to the advertised announcement and submit an application for the Partnership Program subsidy for their property.

(c) The advertisement shall identify the estimated number of units that will be assisted.

(d) The advertisement will not state that applications will only be considered if submitted in response to the advertisement, as DCHA may also receive and consider from time to time applications for allocations of Partnership Program funding assistance under Sections 9304.3 and 9404.4 hereof on a non-competitive basis.

9304.2 If no advertised announcement is outstanding, an Owner of an eligible property may submit an application to DCHA. If the application meets the threshold criteria listed in Section 9307 of this Title, it may be eligible for an Agreement to enter into a Housing Assistance Payment (AHAP) contract. Such an application will be reviewed and considered either upon receipt or under Section 9304.3 below or held for competitive consideration along with any applications received in response to an advertised announcement.

9304.3 DCHA may proceed, after review by the Board of Commissioners, to award a Housing Assistance Payment (HAP) contract without using a competitive process for an eligible property that is:

(a) An existing or new property under a revitalization or development plan initiative of DCHA or a DCHA development subsidiary;

(b) Losing an operating subsidy formerly provided from another source that is no longer available which would result in displacement of eligible low income households; or

(c) In need of a rental subsidy in order to retain the housing as a resource for current and future eligible low income households.

9304.4 DCHA may, in its sole discretion award a Housing Assistance Payment (AHAP) contract to the Owner of an eligible property who is developing an existing or new property under a revitalization or development plan initiative of DCHA or

DCHA's development subsidiary, DC Housing Enterprises. Such property must meet the threshold criteria of Section 9307 of this Title.

9305 INELIGIBLE PROPERTIES

9305.1 The following properties or units are not eligible for the Partnership Program.

(a) Units that are occupied by the Owner of the property. This does not apply to cooperatives, which are deemed rental housing.

(b) Properties located in a flood zone area unless flood insurance is obtained.

(c) High-rise elevator properties with children residing therein, unless the HUD determines that there are no practical alternatives. A high-rise elevator building is any building over five (5) stories.

(d) Shared housing; nursing homes; and facilities providing continual psychiatric, medical nursing services, board and care or intermediate care.

(e) Units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions.

(f) College or other school dormitories.

(g) Manufactured homes. Manufactured homes are defined as structures, which can be transported in one or more sections of eight (8) feet or more in width or forty (40) feet or more in length, or, when erected on site, are three hundred twenty (320) or more square feet, and which are built on a permanent chassis and designed to be used as a dwelling when connected to utilities, and includes plumbing, heating, air-conditioning, and electrical systems.

(h) Units subsidized with any District of Columbia rent subsidy.

(i) Units subsidized with tenant-based assistance under the HOME program or any other duplicative Federal or District of Columbia housing subsidy. This does not include the housing component of a welfare payment, a Social Security payment or a rent reduction because of a tax credit.

9306 REQUIRED APPLICATION INFORMATION

9306.1 DCHA may require any or all of the following information to be included in all applications in a format as provided in the announcement.

(a) A description of the proposed property, including the number of units, the number of bedrooms, the size in square feet of each unit and the types amenities to be provided.

(b) A description of the location of the property including the address, census tract and name of neighborhood.

(c) Evidence of site control which may include, deed, agreement of sale or option to purchase contract.

(d) If the property is new construction or substantial rehabilitation, evidence that the proposed new construction or substantial rehabilitation is permitted by current zoning ordinances.

(e) The proposed Contract Rent for each unit for which Partnership Program subsidy is requested.

(f) For substantial rehabilitation projects, a list and description of the number of households to be relocated and a relocation plan and budget.

(g) The identity of the Owner, the Development Team, if any, and other property principals.

(h) A list of properties owned and/or managed by the Owner or pertinent Development Team members, including the proposed property. Indicate the number of units in each property that receive housing assistance and identify the type of assistance received. Include any units currently occupied by Housing Choice Voucher Program participants. For each property listed, the proposal must disclose and explain:

(1) Current financial default of more than sixty (60) days duration;

(2) Mortgage assignment or workout arrangement;

(3) Foreclosure and/or bankruptcy;

(4) Litigation relating to financing or construction of the property that is pending or which was adjudicated within the past five (5) years with a finding against the Owner or Development Team;

(5) Real estate tax delinquencies; and

(6) Litigation by tenants, both residential and commercial.

(i) A description of the experience of the proposed management company over the past five (5) years.

(j) The Management and Maintenance Plan for the property.

(k) A financial package including sources and uses and showing evidence of financing commitments or conditional commitments and an operating budget.

(l) A timeline for property development showing projected date of occupancy.

(m) Completed certifications regarding commitment to comply with pertinent federal requirements.

(n) Other information as may be deemed necessary by DCHA.

9307 THRESHOLD CRITERIA

9307.1 Where DCHA proceeds under any provision of Section 9304 of this Title, each application must meet the criteria of Section 9307 of this Title.

(a) The property must be eligible under the site and neighborhood standards set forth in Section 6005 of Chapter 60 of these regulations. Information and maps regarding eligible areas may be available from the DCHA Office of Planning and Development or the DCHA Housing Choice Voucher Program.

(b) For existing units, the property must reasonably be expected to be occupied within six (6) months of the date of award of an AHAP Contract and be in compliance with the Housing Quality Standards. For new construction and substantial rehabilitation, the property must reasonably be expected to be occupied within three (3) years of the date of award of an AHAP Contract and be completed in compliance with the Housing Quality Standards. The Housing Quality Standards are available by contacting the DCHA's Housing Choice Voucher Program.

(c) A project must be financially feasible. This may be demonstrated by a ten (10) year operating pro-forma or other means, as specified by DCHA in its periodic announcements of Partnership Program subsidy availability.

(d) Applications requesting Partnership Program subsidy in order to provide supportive living environments for low income disabled families or persons may be awarded HAP Contracts only if the units to be subsidized

were not previously available with supportive services for low income disabled families.

(e) Evidence of ownership, in a format acceptable to DCHA, must be provided with any application.

(f) All principals of the ownership and management entities, including the entity itself, must not be on the U.S. General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9308 RATING AND RANKING OF APPLICATIONS

9308.1 If DCHA proceeds under Section 9304.2 of this Title, the following criteria may be used to rate and rank applications:

(a) The property's ability to meet one or more of the five criteria listed in Section 9300 of this Title;

(b) In properties with four or more units, a weighted average bedroom size exceeding 1.4;

(c) Experience of the Owner and Development Team in successful completion of one or more mixed income, HUD subsidized residential development projects;

(d) Demonstrated market demand for the property if the project will require a lease up from a predominantly vacant condition or will have a rent increase of more than fifteen percent (15%) in the market units;

(e) The experience and professionalism of the proposed management company in providing high quality management of innovative projects and the quality of the proposed Management and Maintenance Plan;

(f) The convenience of the facilities and amenities of the neighborhood and, if the property is located in a poverty impacted neighborhood, a comprehensive neighborhood revitalization strategy must be underway or realistically expected to begin implementation in the next three (3) years.

(g) Such other factors as are published in an announcement.

9308.2 Subsidies will be awarded up to the annual percentage of the total DCHA Housing Choice Voucher Program allocation established pursuant to Section 9302.3 of this Title.

9308.3 In the event that there are more units qualifying for Partnership Program subsidies than are available, Partnership Program subsidies will be reserved for successful applications based on the rating and ranking performed by DCHA.

9309 COMMITMENT AND AWARD OF SUBSIDY

9309.1 Private sector for profit and non-profit owners will be notified within ninety (90) days of receipt of an application of the decision of the DCHA on the qualifications of the application.

9309.2 The notice will indicate whether the application and the property will be:

(a) accepted for the Partnership Program after having been selected. Upon notifying the Owner that the application has been selected, DCHA will enter into an AHAP Contract;

(b) deemed incomplete for not supplying the Required Application Information listed in Section 9306 of this Title and returned to the Owner for further information;

(c) rejected for not having met the Threshold Criteria listed in Section 9307 of this Title;

(d) determined to have been selected but with no Partnership Program subsidy available for the year requested. In these circumstances the Owner will be given the option of accepting an AHAP Contract beginning in a later year.

9310 POST SELECTION CONDITIONS

9310.1 After the determination has been made to award a HAP Contract for a property, the following conditions must also be met before the HAP Contract can be issued.

(a) Relocation. Current tenants of units to receive the Partnership Program subsidy must be eligible for a Housing Choice Voucher. In addition, permanent displacement is prohibited.

(1) If the units to be assisted are occupied by tenants that are over the allowable income, and the application will require a reduction in the total number of units because there are no other vacant units in the building, or if families to be assisted are living in units that are not suitable to family size, the application will be rejected or partially assisted, at DCHA's discretion.

(2) Temporary relocation to accommodate rehabilitation or repairs may not exceed twelve (12) months. Tenants will receive reimbursement from the Owner for reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs to and from the temporary housing and increases in monthly housing costs.

(b) All properties will undergo a property inspection by DCHA or its contractor. The inspection will identify rehabilitation work that is necessary for the units to meet Housing Quality Standards and identify building systems, in danger of failure, which must be repaired or replaced.

(c) If the HAP Contract is used as a pledge to secure financing, DCHA must review the commitment documents to ensure that the financing does not modify the AHAP Contract or the HAP Contract and is not inconsistent with those contracts.

9311 HOUSING ASSISTANCE PAYMENT CONTRACT

9311.1 For existing units, DCHA will enter into an Agreement to Enter into a Housing Assistance Payment (AHAP) Contract for a term of not more than six (6) months.

9311.2 For new construction and substantial rehabilitation, DCHA will enter into an AHAP Contract for a term of not more than three (3) years.

9311.3 If the units have not been occupied by the end of the AHAP Contract term, the allocation will be rescinded. If, after rescission, the Owner is still interested in the Partnership Program and additional allocations are available, the Owner will be required to submit a revised application under a new announcement.

9311.4 Once the Partnership Program units are occupied, DCHA will enter into a HAP Contract with the Owner based on the FMRs in place at the time the HAP Contract is executed. Upon commencement of the contract term, DCHA will make monthly Housing Assistance Payments in accordance with the HAP Contract for each unit occupied by an eligible family. The initial term of the HAP Contract is up to ten (10) years, subject to future availability of appropriations, and the HAP Contract may be extended for an indefinite period thereafter. To obtain the current FMRs, see Section 9303.5 of this Title.

9311.5 Owners agree to accept eligible tenants from DCHA's waiting list in accordance with their own rental screening criteria and to maintain the units at acceptable Housing Quality Standards for the term of the HAP Contract.

9311.6 As long as the vacancy is not the fault of the Owner and the Owner is taking every reasonable action to minimize likelihood and extent of any vacancy, DCHA

will make vacancy payments for up to sixty (60) days for vacant units designated for Partnership Program subsidy.

9311.7 If a unit remains vacant for one hundred and twenty (120) days from the first day of the month in which the unit became vacant, DCHA may reduce the HAP Contract with the Owner in an amount equivalent to the remaining months of subsidy attributable to the vacant unit.

9312 ELIGIBLE TENANTS AND TENANT SELECTION

9312.1 Tenants for units subsidized through the Partnership Program will be selected from the Housing Choice Voucher Waiting List maintained by DCHA in accordance with the Administrative Plan as mended and restated from time to time by the Board of Commissioners.

9312.2 For existing occupied properties that are awarded a HAP contract, current occupants at the time of execution of the HAP contract may elect to participate, if determined income eligible as provided in 9312.6 herein. Such occupants/units are eligible for assistance under the Partnership Program without being processed through the Housing Choice Voucher Waiting List.

9312.3 At least seventy five percent (75%) of the families admitted to the Partnership Program must be families whose annual income does not exceed thirty percent (30%) of median income for the area.

(a) When a DCHA subsidized unit becomes vacant at a Partnership Program property, the property manager will notify DCHA, who will refer the next qualified applicant from the HCVP Waiting List to the management office for screening by the property manager.

(b) Any Partnership Program property manager may refer interested applicants to DCHA to apply for the HCVP housing assistance directly from the HCVP Waiting List based on date and time of application, or in the case of special needs housing properties they may refer applicants to the DC Department of Mental Health, DC Office on Aging, or the DC Department of Health for referral to DCHA as a Special Needs Housing applicant for qualification for the Local Preference provided under the HCVP Administrative Plan.

9312.4 Referrals will be placed on the HCVP Waiting List by date and time of application and other preferences established by the DCHA Housing Choice Voucher Program Administrative Plan.

(a) When a DCHA subsidized unit becomes vacant at a Partnership Program property, the property manager will notify DCHA, who will refer the next qualified applicant from the HCVP Waiting List to the management office for screening by the property manager.

(b) Any Partnership Program property manager may refer interested applicants to DCHA to apply for the HCVP housing assistance directly from the HCVP Waiting List based on date and time of application, or in the case of special needs housing properties they may refer applicants to the DC Department of Mental Health, DC Office on Aging, or the DC Department of Health for referral to DCHA as a Special Needs Housing applicant for qualification for the Local Preference provided under the HCVP Administrative Plan.

9312.5 Referrals will be placed on the HCVP Waiting List by date and time of application and other preferences established by the DCHA Housing Choice Voucher Program Administrative Plan.

9312.6 Any applicant who rejects an offer of a Partnership Program unit or who is rejected for admission to a Partnership Program property by the property manager shall retain his/her place on the DCHA waiting list as if the offer had not been made.

9312.7 DCHA retains the responsibility of determining compliance with all Housing Choice Voucher applicable requirements, including:

(a) Rent reasonableness;

(b) Compliance with Housing Quality Standards;

(c) Applicant eligibility for all applicants including those referred by other agencies under a preference criteria,

(d) Referring eligible applicants from the waiting list in accordance with the Administrative Plan; and

(e) Tenant income certification and recertification.

All persons desiring to comment on the subject matter of this emergency and proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with the OGC, DCHA, 1133 North Capitol, N.E., Room 210, Washington, DC 20002-7599. Copies of these rules may be obtained from the DCHA at the same address.

DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE AND SECURITIES REGULATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Commissioner of the Department of Insurance and Securities Regulations, pursuant to the authority set forth in §§ 101 (9) and 125 of the Insurance Trade and Economic Development Act of 2000, effective April 3, 2001 (D.C. Law 13-265; D.C. Official Code §§ 31-2231.01 (9) and 31-2231.25), hereby gives notice of the adoption of emergency rules to be included in Title 26, Chapter 50 of the District of Columbia Municipal Regulations ("DCMR"). These rules were adopted on an emergency basis to prevent insurers from using weather related claims from Hurricane Isabel, which occurred on September 17-18, 2003, as grounds to non-renew or deny homeowners' insurance to District of Columbia residents. Because many homeowners' insurance policies are now coming up for renewal following the filing of Hurricane Isabel-related claims, the adoption of these rules is necessary to prevent the nonrenewal of insurance policies for impermissible reasons. Accordingly, the immediate protection of the public welfare justifies emergency action.

The Commissioner also gives notice of his intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. These rules will provide the bases upon which insurers may properly non-renew homeowners' insurance, and use claims information from databases.

These emergency rules were adopted and became effective on December 19, 2003, and will expire 120 days after their effective date, or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first. If the effective date is declared invalid by a final and unappealable court order, then the emergency regulations shall be effective on the date of publication of this notice.

Emergency rules on this subject were previously adopted on September 17, 2003, and were published as a Notice of Emergency and Proposed Rulemaking in the D.C. Register on October 31, 2003 at 50 DCR 9269. Several comments were received from interested parties and substantives changes were made to the rules based on those comments. This second Notice of Emergency and Proposed Rulemaking supersedes the prior emergency rules published October 31, 2003.

26 DCMR is amended by adding a new Chapter 50, Unfair Trade Practices, to read as follows:

5000 PERMISSIBLE REASONS FOR NON-RENEWAL AND USE OF CLAIMS HISTORY INFORMATION

5000.1 An insurer shall not refuse to renew a policy of homeowners insurance solely due to claim or loss frequency unless there have been two or more claims during the most recent three-year experience period.

(a) For purposes of counting the number of claims under subsection 5000.1, the insurer shall not consider the first claim for a loss caused by weather, unless the insurer can provide evidence that the insured unreasonably failed to maintain the property and such failure to maintain contributed to the loss.

(b) For purposes of subsection 5000.1, the insurer shall not consider the first claim that was reported to the agent or insurer for which no payment was made by the insurer.

(c) For purposes of subsection 5000.1, the insurer shall not consider a loss where there was no investigation or other claim activity.

(d) For purposes of subsection 5000.1, an insurer shall not count any losses caused by a catastrophic event. A catastrophic event shall be a manmade or natural event that causes $25 million or more in insured property losses, and affects a significant number of property and casualty policyholders and insurers.

5000.2 Every insurer shall provide a notice to its homeowners insurance policyholders that the insurer considers claims history in determining whether to renew the policy. Such notice may be on the declarations page or on a separate notice that accompanies the policy so long as the notice is conspicuous and includes language substantially similar to the following statement: "Your insurer may consider your claims and loss history when determining whether to renew your policy."

5000.3 An insurer may refuse to renew a policy of homeowner's insurance due to claim or loss frequency based upon standards more restrictive than those set forth in this rule if the insurer has, at the time of policy issuance or renewal, provided the insured with a written copy of the underwriting standards upon which the insurer based its nonrenewal, so long as the standards are conspicuous.

5001 USE OF CLAIMS HISTORY—NEW BUSINESS

5001.1 In determining whether to issue a homeowners' insurance policy on a property not previously owned by the applicant, an insurer shall not base an adverse underwriting decision solely on the loss history of a previous owner of the property to be insured.

5002 EFFECTIVE DATE

5002.1 Sections 5000 and 5001 shall take effect on December 19, 2003 for all homeowners' insurance policies issued or reissued on or after that date, except that the notice to homeowners policyholders described in subsection 5000.2 shall take effect for policies issued or reissued on or after March 1, 2004.

5003-5099 RESERVED

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Leslie Johnson, Hearing Officer, 810 First Street, N.E., Suite 701, Washington, D.C. 20002. Copies of these rules may be obtained at the address stated above.